

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

ERIC LYONS,	:	CIVIL ACTION NO. 1:13-CV-2952
	:	
Plaintiff,	:	(Chief Judge Conner)
	:	
v.	:	
	:	
JEFFREY BEARD, et al.,	:	
	:	
Defendants.	:	

ORDER

AND NOW, this 19th day of December, 2013, upon consideration of the report of Chief Magistrate Judge Martin C. Carlson (Doc. 7), recommending the court grant the plaintiff's motion (Doc. 2) for leave to proceed *in forma pauperis* but dismiss plaintiff's complaint as to defendant Jeffery Beard, and, following an independent review of the record, the court agreeing with the magistrate judge that the claims against defendant Beard are time barred by the two-year statute of limitations governing Section 1983 claims, see Wilson v. Garcia, 471 U.S. 261, 266-267 (1985) (claims brought pursuant to 42 U.S.C. § 1983 subject to state statute of limitations for personal injury actions); see also Sameric Corp. v. City of Philadelphia, 142 F.3d 582, 599 (Pennsylvania's two-year statute of limitations for personal injury actions applies to Section 1983 claims), and the court further agreeing that the continuing violations doctrine does not toll the statute of limitations, and that granting leave to amend would thus be futile, see Alston v. Parker, 363 F.3d 229, 235 (3d Cir. 2004) (acknowledging that leave to amend should be liberally granted but carving out exception for claims which are clearly futile), and it further appearing that neither party has objected to the report, and that there is no clear error

on the face of the record,¹ see Nara v. Frank, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that “failing to timely object to [a report and recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level”), it is hereby ORDERED that:

1. The report of the magistrate judge (Doc. 7) recommending dismissal of the plaintiff’s claims against defendant Jeffery Beard but allowing the plaintiff to proceed against the remaining defendants is ADOPTED in its entirety.
2. Plaintiff’s motion (Doc. 2) for leave to proceed *in forma pauperis* is GRANTED.

¹ When parties fail to file timely objections to a magistrate judge’s report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. Thomas v. Arn, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit expects courts to “afford some level of review to dispositive legal issues raised by the report.” Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that “[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” FED. R. CIV. P. 72(b), advisory committee notes; see also Henderson, 812 F.2d at 878-79 (stating that “the failure of a party to object to a magistrate’s legal conclusions may result in the loss of the right to *de novo* review in the district court”); Tice v. Wilson, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that the court’s review is conducted under the “plain error” standard); Cruz v. Chater, 990 F. Supp. 375-78 (M.D. Pa. 1998) (holding that the court’s review is limited to ascertaining whether there is “clear error on the face of the record”); Oldrati v. Apfel, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that the court will review the report and recommendation for “clear error”). The court has reviewed the magistrate judge’s report and recommendation in accordance with this Third Circuit directive.

3. Plaintiff's complaint (Doc. 1) is DISMISSED to the limited extent it seeks to state a claim against defendant Jeffery Beard.
4. The United States Marshals Service is directed to serve the *pro se* plaintiff's complaint (Doc. 1) on the remaining defendants.

/S/ CHRISTOPHER C. CONNER
Christopher C. Conner, Chief Judge
United States District Court
Middle District of Pennsylvania